IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

WP(C).No. 35194 of 2004(M)

AS.207/2003 of V ADDL. DISTRICT COURT, ERNAKULAM

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PETITIONER:

DEEPA VIMAL, W/O. VIMAL,
AGED 30 YEARS, MALIYEKKAL HOUSE,
VALANJAMBALAM, ERNAKULAM.

BY ADV. SRI.K.R.VINOD

RESPONDENT:

M. RAGHAVA MENON, S/O. KOCHUPAPPIYAMMA
MELETHU MADOM, ELAMANA ROAD,
NADAMA, TRIPOONITHURA.

BY ADV. SRI.P.O.JOSEPH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/08/2007, ALONG WITH WPC NO. 35195 OF 2004, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 35194 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE COMMON DECREE IN OS NO.752/99 AND OS NO.677/00 DT.18.03.03 OF THE MUNSIFF'S COURT, ERNAKULAM.

EXT.P2 : TRUE COPY OF THE ORDER DT.10.04.03 IN IA NO.2843/2003.

EXT.P3 : TRUE COPY OF THE PROSECUTION PETITION FILED IN AS NO.207/03 BEFORE THE DISTRICT COURT, ERNAKULAM.

PIUS C. KURIAKOSE, J.

W.P.(C) Nos. 35194 and 35195 OF 2004

Dated this the 6th day of August, 2007

JUDGMENT

The petitioners in these writ petitions under Article 227 are daughter and mother. The respondent as plaintiff had filed a suit against the petitioner in WP(C) 35194 of 2004 as OS No.677 of 2000 and another suit against the petitioner in WP(C) 35195 2004 as OS No. 752 of 1999. Both the suits were filed for a decree for permanent prohibitory injunction restraining the defendant from trespassing into the property owned by the respondent. The suits were jointly tried and ultimately both the suits were dismissed by the learned Munsiff by a common judgment and decree.

2. The case of the petitioners is that at the time when the suits were dismissed, the respondents neither made a request before the learned Munsiff nor filed any application for getting an order regarding maintenance of status quo. Therefore, on the very next day of the decree, the petitioner in WP(C) No.35194of 2004 would reconstruct an existing shed on the property and start automobile workshop cum residence in that shed. Later, on 09.04.03, which is about a month after the suits were dismissed, the respondent filed IAs seeking a direction for maintenance of status quo by the parties. A copy of the IAs were

served on the advocate of the petitioners and he entered appearance in the court on 20.10.03 and sought time to file objections to the IAs.

3. The grievance is that without granting time, the court below passed order directing both parties to maintain status quo with retrospective effect. These Writ Petitions have been filed impugning the direction for maintenance of status quo ante. It is pointed out that challenging the common judgment and the decrees, appeals AS Nos.206 of 2003 and 207 of 2003 have been filed before the District Court, Ernakulam and that the respondent has now filed prosecution petitions before the court below alleging that the order directing maintenance of status quo has been violated by the petitioners.

Sri.K.R.Vinod, learned counsel for the petitioner has addressed me elaborately. He would flay the direction of the learned Munsiff under Ext.P2 (in both the cases) that status quo ante be maintained as obtaining on the date of dismissal of the suit. Even though Sri.Vinod made very strenuous submissions, I am not inclined to set aside Ext.P2 nor am I inclined to adjourn the matter for which a request was made on behalf of the learned counsel for the respondent. I dispose of both the Writ Petitions issuing the following directions:

The petitioners are permitted to file memoranda of cross objections in the appeals already filed by the respondent assailing

Ext.P2 on all available grounds within two weeks of their receiving copy of this judgment. If memoranda of cross objections are filed by the petitioners, the court presently considering AS Nos.206 and 207 of 2003 will consider those memoranda and dispose of the same along with the appeals themselves. Proceedings, if any, initiated by the respondent for prosecution or under contempt jurisdiction for the alleged violation of Ext.P2 will be kept in abeyance by the concerned court till such time as the two appeals and cross objections are disposed of.

PIUS C. KURIAKOSE, JUDGE

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